CF0000062489

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO.2415 OF 1999.

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

(11949)

9/9/99 Marital Entry by Shri ..... Advocate

Rs. A.P.

APPELLANT : RAVI @ KHANGGESHWAR TANDI, son of Kamly Tandi, aged about 35 years, resident of Makhnamunda P.S.Paikamal District Padampur Orrisa.

(V e r s u s)

RESPONDENT : The State of Madhya Pradesh through Police Station Khamtarai, Raipur District Raipur.

CONVICTION SENTENCE

9/9 Clerk Advocate's Board

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 2415/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J

10.1.2007

Mr. M.P.S. Bhatia, Advocate for the appellant

Mr. Ravindra Agarwal, P.L. for the State.

Heard.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, Ag. Chief Justice.

This appeal is directed against the judgment of conviction and order of sentence dated 25.6.1999 passed by the Additional Sessions Judge (Special Judge, NDPS), Raipur in S.T.No.203/98, whereby the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of his son Bharat, sentenced him to undergo R.I. for life and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 6 months. The accused has also been convicted under Section 307 for attempting to commit murder of his wife Sanjana, under Section 307 for attempting to commit murder of his son-Basant & under Section 307 for attempting to commit murder of his daughter-Chanchala alias Ninni and sentenced to undergo under each offence R.I. for 5 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months. The accused has also been convicted under Section 309 of the IPC for attempting to commit suicide and sentenced to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

undergo R.I. for 1 year. All the sentences have been directed to run concurrently.

The case of the prosecution, in brief, is that on 25.5.1998 at about 11.30 p.m. in the night, Ramapati Bhardwaj (PW-12) lodged the F.I.R. (Ex.P-14) in the Police Station Khamtarai to the effect that he along with his family members is residing at Ring Road No.2, Near Subbu Engineering Works. Adjacent to his house, accused Ravi Gond along with his wife Sanjana, sons Basant & Bharat and daughter Ninni is residing since last five years. Today, Ravi and his wife returned from their work at about 5.30 p.m., he informed him that his wife is not feeling well, on which he advised him to take her to the doctor. In the night, the family members of accused did not cook their meals, the children of accused took some biscuits & sweet water made of lemon and went for sleep. Ravi also went for sleep in the open ground. He also after taking his meal went for sleep along with his son Pawan on a cot, whereas, his wife and his daughter Bindeshwari were sleeping on the another cot. At about 10.45 p.m. his wife asked him to wake up, he woke up and saw that Basant was crying and saying that his father has cut his throat, on which he asked his daughter Bindeshwari to bring burning lamp. He saw in the light of lamp that Ravi had already cut the throat of his son Bharat, daughter Ninni & wife Sanjana and they were unconscious on account of injury. After seeing him, Ravi also started cutting his neck with the blade. He intervened. His wife, daughter & brother have witnessed the incident. Ravi has cut the neck of Bharat, Basant, Ninni and thereby he has attempted to commit murder of those persons. Receiving this report, the Station House Officer, Police Station Khamtarai registered the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Crime No.129/98, left for the scene of occurrence and arrested accused Ravi under Ex.P-15. By the time he reached on the scene of occurrence, Bharat was already dead, therefore, he prepared inquest (Ex.P-19) on the body of Bharat after giving notice (Ex.P-18) to the Panchas. Basant, Chancala, Sanjana & accused Ravi were sent to Maikhara Hospital, Raipur for their treatment and examination under Ex.P-21, 22, 23 & 24, where Dr. Avlok Shukla (PW-18) examined them and prepared the injury report Ex.P-33 of Basant, Ex.P-34 of Chanchala, Ex.P-35 of Sanjana and Ex.P-36 of accused Ravi. The Investigating Officer prepared the site plan (Ex.P-25) of the place of occurrence. On query by Station House Officer from Dr. Avlok Shukla to the effect that whether injuries present on the fingers of accused can be caused by the blade, Dr. Shukla gave his opinion (Ex.P-27) to the effect that Injury No.3 & 6 described in the MLC of accused can be caused by hard & sharp object and Injury No.4 & 5 are caused by hard & blunt object. The blade was also sent to the doctor under Ex.P-28 for his opinion and vide Ex.P-29 the doctor opined that injuries sustained by Sanjana, Chanchala & Basant can be caused by the said blade. Articles, which were recovered from the place of occurrence, & clothes were sent for chemical examination to the Forensic Science Laboratory, Raipur under Ex.P-30, from where report Ex.P-32 was received. Serologist's report Ex.P-37 was also received.

After completion of usual investigation charge sheet was filed against the accused in the court of Chief Judicial Magistrate, Raipur, who in turn committed the case to learned Sessions Judge, Raipur from where the Additional Sessions Judge received the case on transfer for trial. The

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prosecution in order to establish the charge against the accused examined 18 witnesses. Statement of accused was recorded under Section 313 of the Cr.P.C. in which he denied the materia appearing against him in the prosecution evidence and stated that his whole family was sleeping in open ground, at that time some unknown person came & inflicted injuries on them by a blade. He has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant herein, as afore-mentioned.

We have heard Mr. M.P.S. Bhatia, Advocate for accused/appellant and Mr. Ravindra Agarwal, Panel Lawyer for the State.

Learned counsel for the accused/appellant argued that the prosecution has not been able to establish the crime in question against the accused/appellant beyond reasonable doubt, as when the accused and his family members were sleeping in the open ground, in the pitch-dark night some unknown person had inflicted injuries by the blade on their neck. Therefore, the accused/appellant is entitled for acquittal.

On the other hand, learned Panel Lawyer for the State supported the judgment of the trial court.

Having heard learned counsel for the parties, we have perused the evidence available on the file of trial court and the impugned judgment.

It is an admitted position that on the fateful day the accused was residing adjacent to the house of Ramapati Bhardwaj (PW-12). It has been admitted by the accused that he along with his family members was sleeping in

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the open ground. Ramapati along with his wife, son, daughter & brother was also sleeping on the cot nearby the area. In this case, the material and injured witnesses namely Sanjana (PW-13) & Basant (PW-14) have turned hostile and they have not supported the prosecution case except that they sustained injuries. On cross-examination by the Public Prosecutor, Sanjana has stated to the extent that accused being her husband, she is bound to protect his interest. Whereas, the third injured witness namely Chanchala has not been examined. Therefore, the evidence of remaining witnesses to be scrutinized are Kailash (PW-4) brother of Ramapati, Saraswati (PW-5), wife of Ramapati, Pawan (PW-6), son of Ramapati, Bindeshwari (PW-7), daughter of Ramapati & PW-12 Ramapati himself, who were sleeping in the nearby area of the place of incident.

PW-4 Kailash has stated in his evidence that he is residing along with his brother Ramapati and family members of his brother Ramapati namely Saraswati, Bindeshwar & Pawan. Accused Ravi along with his family members started living in the adjoining room about 2½ years back. In the fateful night, he returned from his work at about 9-9.30 p.m.. by that time his brother Ramapati & niece Bindeshwari already went for sleep. Accused Ravi and his family members were also lying in front of their room in open ground. At that time, his nephew Pawan and sister-in-law Saraswati had not gone for sleep. After taking his meal from his sister-in-law, he also went to his bed. By the time he was feeling sleepy, he heard commotion, on which he woke up. His brother Ramapati also woke up, he asked him to bring lamp after burning the same. He saw that Ravi was jumping, his brother enquired from him as to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

whether he was bitten by snake. He brought the burning lamp, on which his sister-in-law Saraswati said that Ravi is cutting his throat with a blade, he himself saw that Ravi was cutting his throat with a blade. Ravi after putting his head on the ground lay down on the ground. Elder son of Ravi namely Basant came near to his sister-in-law Saraswati and stated that his father has cut his throat, his body was drenched with blood and there was a cut on his neck. There was cut on the neck of Chanchala & Bharat and blood was oozing out those injuries. Bharat was in a serious condition. Sanjana was weeping. She was trying to console her children. His brother went to Birgaon seeking help of people and thereafter his brother reported the matter to the police.

PW-5 Saraswati has also corroborated the above evidence of PW-4 Kailash and said that when she was massaging the head of his son Pawan, she felt sleepy. When she was feeling like sleepy, her son Pawan asked her to see what is happening, on which she saw that Basant, elder son of Ravi, was jumping. Thereafter, she asked her husband to wake up. Ravi was standing by the side of Basant, on account of darkness it was not possible to see that what Ravi was doing, therefore, burning lamp was called and in the light of lamp they saw that blood was oozing from the neck of Basant. Her husband went to Saheed Nagar for calling the persons for help. In the light of lamp, she saw that there was a cut on the neck of Chanchala & Bharat. Neck of Sanjana was covered with Dhoti and there was blood on the Dhoti. Ravi was jumping and thereafter he fell down on the ground. She felt disturbed after seeing the blood. She enquired from Basant as to what has happened, on which he replied that his father is catching his neck. When they saw in the light of lamp, the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

blood was oozing out from the neck of Basant. At that time, they saw that from the neck of children of accused blood was oozing out. On cross-examination by the Government Pleader, this witness has stated that her son Pawan heard the cries of Basant, he asked her to wake up, thereafter, she asked her husband to wake up. Basant came and asked them to save him, as his father is cutting his throat. Blood was oozing out of the neck of Ravi, blood was also oozing out of the neck of Bharat & Ninni alias Chanchala. There was a cut on the neck of Sanjana, wife of accused.

PW-6 Pawan has also corroborated the above evidence of his mother & uncle and stated that his father & sister went for sleep. At the distance of 8-10 feet, Ravi and his family members were lying and Ravi was sitting. He heard the cries of Basant, son of accused, on which he asked his mother to wake up and his mother asked his father to wake up. Ravi was jumping at that time. Ravi started cutting his throat by a blade on which his mother raised cries that Ravi is cutting his throat, thereupon, his father caught him and in the light of lamp, he saw that blood was oozing out of the neck of Chanchala, Basant, Bharat and Sanjana. Basant was saying that his father has cut his throat. Bharat was not able to speak and Chanchala was sitting. PW-7 Bindeshwari Bai, daughter of Ramapati & PW-12 Ramapati have also corroborated the above evidence.

The defence has not cross-examined these witnesses on the aspect that what they have stated regarding the involvement of accused that he himself was cutting his throat, what Basant has stated to them and also on other material evidence regarding involvement of the accused in crime in question. All these witnesses are independent witnesses, they have no animosity against the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused, moreover, the accused himself cut the throats of his family members, therefore, it cannot be believed that these witnesses have stated something wrong against the accused in such a heinous crime in which the accused himself was involved in committing the murder and attempting to commit the murder of his own near and dears. On the other hand, family members of accused were sleeping, he was present there, even Pawan (PW-6) has stated that other family members of the accused were sleeping and he was sitting there, therefore, the explanation given by the accused that they were sleeping, in the pitch-dark night some unknown person came and inflicted injuries on the neck of family members, cannot be believed. Therefore, a false explanation has been given by the accused, as such, to the extent of involvement of accused in attempting to cut his throat, cutting the throats of deceased Bharat and other family members i.e. wife, another son and daughter is established beyond reasonable doubt. Therefore, the offence under Section 302 of the IPC is established against the accused.

As far as the offence under Section 307 for cutting the throats of Sanjana, Chanchala & Basant is concerned, Dr. Avlok Shukla (PW-18) has stated that on 26.5.1998 he examined Chanchala, there were four cut injuries on her neck. Similarly, he examined Sanjana, there were two cut injuries on her neck. He also examined Basant and found two cut injuries on his neck. He also examined the accused and found two cut injuries on his neck. The witnesses have also stated that the accused was cutting the throat with a blade and the evidence suggest that the accused cut the throat of his family members in order to commit their murders and his own throat in order to commit suicide

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —9—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and as a result of neck injuries Bharat had died. Accordingly, the accused cut the throats of Sanjana, Chancala and Basant with an intention to cause their death, as such, he has been rightly convicted under Section 307 of the IPC for each of the attempts made by him to commit the murder of Chanchala, Sanjana & Basant. He himself has also attempted to commit suicide by cutting his throat, therefore, he has rightly been convicted under Section 309 of IPC.

In the result, we do not find any illegality or infirmity in convicting and sentencing the accused for the offence under Section 302 of IPC, for committing murder of Bharat; under Section 307 for each of the injury to Sanjana, Chanchala & Basant as also under Section 309 of the IPC for making attempt to commit suicide. The appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
SUNIL KUMAR SINHA
Judge

Sd/-
Acting Chief Justice

Roshan/-

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17/11/2012